

REMARKS

Claims 1-6 and 15-23 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claims 1-6 and 16-23 were rejected under 35 U.S.C. § 112, first paragraph, as lacking enablement for any other BPI protein, fragment, analog, or variant with three-dimensional coordinates as in Table 4. The Office Action acknowledged that the specification is enabling at least for practicing three dimensional modeling with the atomic coordinates in Table 4. Finally, claims 1-6 and 15-23 were rejected under 35 U.S.C. §103(a) over Balaji et al. U.S. Patent No. 5,579,250 in view of the legal decision of *In re Gulack*, 703 F.2d 1381, 1385, 217 U.S.P.Q. 401, 404 (Fed. Cir. 1983).

Applicants have cancelled claims 1-25 without prejudice or waiver. Applicants do not agree or accede to the correctness of the foregoing rejections, and Applicants reserve their right to pursue claims 1-25 in one or more continuing applications. However, in order to expedite prosecution of this application, Applicants have cancelled claims 1-25 and presented new claims 26-37.

New claims 26-37 relate to crystals comprising bactericidal/permeability-increasing (BPI) protein. New claims 26-37 are novel, nonobvious, definite, enabled, and directed to statutory subject matter. New claims 26-37 are supported by the specification, including by Examples 1 and 2. Claims 30 and 36 are further supported by the specification, including at page 7, lines 23-25. Applicants respectfully request entry of this amendment. Applicants respectfully assert that the new crystal claims do not cross the boundaries imposed by the restriction requirement of December 12, 2000, to the original method claims, and that the reasons for separating the original method claims do not apply to new claims 26-37. The Examiner has the discretion of

allowing Applicants to enter such claims into the instant application and Applicants respectfully request favorable consideration of the same.

The Commissioner is hereby authorized to charge Deposit Account No. 13-0017 (McAndrews, Held & Malloy) for any fee deficiency, or credit any overpayment associated with this application.

In view of the foregoing amendments and remarks, Applicants submit that claims 26-37 are in condition for immediate allowance. The Examiner is invited to telephone Applicants' undersigned representative if the Examiner believes, for any reason, that personal communication would expedite prosecution of this application.

Respectfully submitted,



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